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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/921,060	08/29/1997	DARRELL R. ANDERSON	012712-432	9119

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EXAMINER

SCHWADRON, RONALD B

ART UNIT

PAPER NUMBER

1644

DATE MAILED: 08/15/2002

44

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No. <b>08/921,060</b>	Applicant(s) <b>Anderson et al.</b>
	Examiner <b>Ron Schwadron, Ph.D.</b>	Art Unit <b>1644</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Jul 19, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.

b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on Aug 8, 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2.  The proposed amendment(s) will not be entered because:

- (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
- (b)  they raise the issue of new matter (see NOTE below);
- (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see enclosed note

3.  Applicant's reply has overcome the following rejection(s):  
\_\_\_\_\_  
\_\_\_\_\_

4.  Newly proposed or amended claim(s) 21 and 22 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5.  The a)  affidavit, b)  exhibit, or c)  request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
\_\_\_\_\_

6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7.  For purposes of Appeal, the proposed amendment(s) a)  will not be entered or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none

Claim(s) objected to: 14 and 15

Claim(s) rejected: 11-13 and 16-20

Claim(s) withdrawn from consideration: none

8.  The proposed drawing correction filed on \_\_\_\_\_ is a)  approved or b)  disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). RONALD B. SCHWADRON

10.  Other: see enclosed note

**RONALD B. SCHWADRON**  
**PRIMARY EXAMINER**  
**GROUP 1600 1600**

Serial No. 08/921060

Art Unit 1644

1. Proposed claims 11 and 16 raise new issues that would require further search and consideration in the recitation of "itself". According to applicants comments in page 4, last paragraph of the instant amendment, the term "itself" as used in the context recited in the proposed claims implies that the antibody has the particular functional attribute in the absence of a chemotherapeutic agent. Applicants comments indicate that in the absence of said limitation that the functional property recited in the claims could be found in the presence of a chemotherapeutic agent. However, the limitation "itself" in the context recited the claims is not present in the pending claims. If said term is interpreted in the context of applicants comments in page 4, last paragraph of the instant amendment, then said limitation would necessitate a new search of the prior art and new potential rejections over the prior art because said limitation is not present in the claims under consideration and it changes the scope of the claims under consideration. Proposed claims 11 and 16 raise new issues in the deletion of "about" from claims 11 and 16. Regarding applicants comments, the deletion of "about" from claim 16 changes the range recited in said claim. Similarly, the deletion of "about" from claim 11 changes the dosage recited in from claim from a range (eg. .4mg plus or minus whatever dosage would be encompassed by about) to a single value (.4mg) wherein said change in dosage would require further consideration in the pending 103 rejection.
2. Papers related to this application may be submitted to Group 1600 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Papers should be faxed to Group 1600 at (703) 308-4242.
3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Ron Schwadron whose telephone number is (703) 308-4680. The examiner can normally be reached Monday through Thursday from 7:30 to 6:00. The examiner can also be reached on alternative Mondays. A message may be left on the examiners voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1600 receptionist whose telephone number is (703) 308-0196.

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RONALD B. SCHWADRON  
PRIMARY EXAMINER  
GROUP 1800 66W

Ron Schwadron, Ph.D.

Primary Examiner

Art Unit 1644